

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:)	Group Art Unit: 3623
Christopher N. Kline)	Examiner: Neil R. Cardos
Application No.: 10/635,397)	IBM Corporation
Filed: August 6, 2003)	Intellectual Property Law
Title: METHOD, APPARATUS AND)	Department SHCB/040-3
PROGRAM STORAGE DEVICE FOR)	1701 North Street
SCHEDULING THE PERFORMANCE OF)	Endicott, NY 13760
MAINTENANCE TASKS TO MAINTAIN A)	Appeal No.:
SYSTEM ENVIRONMENT)	Confirmation No.:

REPLY BRIEF UNDER 37 CFR 1.193(b)(1)

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Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a Reply Brief under 37 CFR 1.193(b)(1) in response to the Examiner's Answer dated March 10, 2009.

Appellant maintains the positions and arguments presented in the Appeal Brief filed December 9, 2008, and herein responds to the (9) Grounds of Rejection and (10) Response to Argument in the Examiner's Answer dated March 10, 2009 regarding the rejection of claims 1, 5-6, 8, 12-14, 18-19, 21, 25-26 and 28 under 35 U.S.C. § 103(a) as being unpatentable over "McAfee Total Protection for your PC - McAfee Utilities Version 4.0 User's Guide" (referred to in the Final Office Action as "the McAfee Manual" and referred to herein as "the McAfee Total Protection for your PC Guide") in view of "Description of the Low Disk Space Notification Tool

in Windows XP” (referred to in the Final Office Action as “the Disk Space article”), and further in view of “How to Automate the Disk Cleanup Tool in Windows XP” (referred to in the Final Office Action as “the Disk Cleanup article”).

In (10) Response to Argument, the Office has maintained on the record its position that the generic boiler plate LICENSE AGREEMENT wording included in the McAfee Total Protection for your PC - McAfee Utilities Version 4.0 User’s Guide should be interpreted as disclosing a server in a distributed computing environment and that this boiler plate LICENSE AGREEMENT wording would be read by one skilled in the art as disclosing something about the McAfee Utilities software that was left out of the rest of the McAfee Total Protection for your PC - McAfee Utilities Version 4.0 User’s Guide. In this distortion of McAfee Total Protection for your PC - McAfee Utilities Version 4.0 User’s Guide, we are asked to ignore the fact that the purpose of the McAfee Total Protection for your PC - McAfee Utilities Version 4.0 User’s Guide is to be an instruction manual for the software, and instead read the generic boiler plate LICENSE AGREEMENT included in the McAfee Total Protection for your PC - McAfee Utilities Version 4.0 User’s Guide as the instructions on how to use the software with a “Server” in a “Server-Mode”, with this being the primary disclosure of the combination on which Appellant’s claimed invention is being rejected and currently denied. Appellant first contends that one skilled in the art would not read the LICENSE AGREEMENT for disclosure instructions or as a guide to use the software, and as the Office does not hesitate to take official notice, Appellant’s contend and take official notice that most people do not read such LICENSE AGREEMENT wording at all and simply click the accept button to install the software they have purchased, and if they do read such it is for its legal content and not for instructions or disclosure on how the software works.

In particular, in this case, a fair and complete reading of the LICENSE AGREEMENT shows that it is a “LEGAL AGREEMENT (“AGREEMENT”), FOR THE LICENSE OF SPECIFIED SOFTWARE (“SOFTWARE”) BY NETWORK ASSOCIATES, INC. (“McAfee”)”, and with such wording one cannot interpret the remainder of the LEGAL AGREEMENT wording to be disclosure, instructions or descriptions of the McAfee Total Protection for your PC - McAfee Utilities Version 4.0 User’s Guide, in that, it is clearly stated as being a LEGAL AGREEMENT. Additionally, based on this wording it is clear that this generic boiler plate language is used with a multitude of NETWORK ASSOCIATES, INC. software products (SPECIFIED SOFTWARE “SOFTWARE”), and it was not even customized specifically or specified for this McAfee Total Protection for your PC - McAfee Utilities Version 4.0 User’s Guide software product. It is from this LEGAL AGREEMENT wording that the current rejections of the claimed inventions have their basis and foundation. It must be reviewed and noted that it is only in this LEGAL AGREEMENT wording where the Office has found the supposed disclosure of the claimed invention as quoted in (10) Response to Argument, and that no similar wording or description has been found or cited in the remainder of the McAfee Total Protection for your PC - McAfee Utilities Version 4.0 User’s Guide because it does not exist, since this software is “for your PC” (that is, Personal Computer). Applicant notes that this application is not a business method invention for licensing software, where it may have been appropriate for the Office to cite such legal wording from this LICENSE AGREEMENT. Given that all the claims stand rejected using this LEGAL AGREEMENT wording as the basis and foundation for the rejections, all of the current rejections must be withdrawn. As set forth in the Appeal Brief filed, the rejections must be withdrawn in that the present claims have not been rendered obvious by the Office’s reliance on the combination of references including the

disclosure of this LEGAL AGREEMENT. Additionally, as set forth in the Appeal Brief, the rejection must be withdrawn in that they are based on the misstatement of facts as to what McAfee Total Protection for your PC - McAfee Utilities Version 4.0 User's Guide discloses. In that these rejections are based on these statements of facts alleging what McAfee Total Protection for your PC - McAfee Utilities Version 4.0 User's Guide discloses, such rejections are based on this non-factual and faulty interpretation of using the LEGAL AGREEMENT wording as disclosure of something it is not, the rejections must be withdrawn.

Appellant respectfully requests withdrawal of the appealed rejections and allowance of the pending claims 1, 5-8, 11-14, 18-21, 24-26 and 28.

Respectfully submitted,

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